

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 13.03.2006

CORAM

THE HONOURABLE MR. JUSTICE R. BALASUBRAMANIAN
and
THE HONOURABLE MR. JUSTICE P.P.S. JANARTHANA RAJA

Tax Case (Revision) No.205 Of 2006

The State of Tamil Nadu
Rep. by the Deputy Commissioner (CT)
Tirunelveli Division,
Tirunelveli 627 002. Petitioner

-Vs.-

Tvl. New Kamaliya Hotel
Virudhunagar. Respondent

Prayer: Revision before the Tamil Nadu Taxation Special Tribunal Chennai to revise the order of the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai dated 19.2.2004 passed in M.T.S.A.No.26/2003 (Appeal No.1/2002 dated 28.2.2002 on the file of the Appellate Assistant Commissioner, (CT) Virudhunagar, against TNGS No.5221209/1999-2000 dated 16.11.2001 on the file of the Deputy Commercial Tax Officer I, Virudhunagar.

For Petitioner : Mr.T.Ayyasamy, Spl Government Pleader

O R D E R

(Order of the Court was made by P.P.S.JANARTHANA RAJA, J)

This revision is filed against the order of the Sales Tax Appellate Tribunal, Madurai dated 19.2.2004 passed in M.T.S.A.No.26 of 2003, by the State raising the following question of law:

"Whether the Sales Tax Appellate Tribunal is right in approving the reappraisal of evidence made by the first appellate authority dislodging the cogent and convincing reasons given by the assessing officer?"

2. The facts leading to the above question of law are as under:

The Deputy Commercial Tax Officer by order dated 24.1.2000 determined the total and taxable turn over of the assessee as Rs.14,72,570/- and Rs.Nil respectively for the year 1999-2000. Subsequently, the Assessing Officer reviewed the assessment by utilising the estimation arrived at by the Enforcement Wing Official during the course of inspection conducted at the place of business of the assessee on 19.7.1999. In the above inspection, they watched sales and gathered details of sales of parcel service and at counter of the said hotel. They found that on 19.7.1999 one day sales was to an extent of Rs.6,660/- and they also recovered certain incriminating records during the course of inspection. Based on the incriminating records recovered and the observation of one day sales in the hotel, they calculated the sales in the hotel for the whole year and after deducting the sales done as per accounts, arrived at the estimation to an extent of Rs.9,41,457/- as sales in the hotel, which was the sales covered for non-inspection period during 1999-2000 and re-determined the total and taxable turn over at Rs.26,69,882/- and brought the same as tax liability under Section 3-D of the TNGST Act. Aggrieved by the order, the assessee preferred an appeal before the Appellate Assistant Commissioner (CT) disputing the difference of Rs.11,97,346/- utilised for assessment under Section 3-D and penalty levied under Section 16(2) of the Act at Rs.90,897/-. The Appellate Assistant Commissioner deleted the entire estimation but only sustained 20% addition to the book turnover and brought the assessee under, below the tax liability. As the total and taxable turnover was fixed below the taxable limit, the penalty levied by the Assessing Officer was also cancelled. Aggrieved by the said order, the Revenue filed an appeal before the Tamil Nadu Sales Tax Appellate Tribunal (Additional Bench), Madurai. The Tamil Nadu Sales Tax Appellate Tribunal dismissed the appeal filed by the Revenue and confirmed the order of the learned Appellate Assistant Commissioner.

3. The learned Standing Counsel appearing for the Revenue submitted that the Assessing Officer had clearly established that there was sales suppression and purchase suppression and therefore the estimation was just and reasonable and hence it was submitted that the order of the Appellate Assistant Commissioner, deleting the entire additions, but restricted to 20%, requires reconsideration.

4. We heard the counsel. The Assessing Officer made estimate based on the one day sales. Normally, sales may differ from auspicious day and inauspicious day. So, taking the one day average for estimation is not a scientific method sanctioned by law. It is only a crude method which has no substance. At least in order to arrive at one day sales, either the Assessing Authority or the Enforcement Wing Officers should have made surveys every month taking into consideration the normal day, auspicious day and inauspicious day. Both the

authorities below also found that there was no omission established by the Revenue. Mere one day sales could not be attributed to estimate the whole year without considering the festival season, rainy season and other natural calamities. It is also seen that the first Appellate Authority as well as the second Appellate Authority had considered all the relevant materials and came to the correct conclusion. The Assessing Officer had only relied on the one day sale for making estimation. The Tribunal is correct in holding that the Assessing Officer was wrong in estimating the additions which was solely based on one day sales. We are of the firm view that the Assessing Office cannot make estimate based on one day sales.

5. In view of the foregoing reasons, we find no error or infirmity in the order of the Tribunal and hence no question of law arises for consideration of this Court. Accordingly the tax case is dismissed. No costs.

Tr/km

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The Assistant Registrar,
Tamilnadu Sales Tax Appellate,
Tribunal, Madurai.

2. The Deputy Commissioner (CT)
Tirunelveli Division,
Tirunelveli 627 002.

3. The Appellate Assistant Commissioner (CT)
Virudhunagar.

4. The Deputy Commercial Tax Officer I
Virudhunagar.

JRG(CO)
SR/3.4.2006

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